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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF WASHINGTON6 DEBBIE J. HARDENBROOK,)
7 Plaintiff,) No. CV-12-29-JPH
8 v.) ORDER GRANTING DEFENDANT'S
9 MICHAEL J. ASTRUE, Commissioner) MOTION FOR SUMMARY JUDGMENT
10 of Social Security,)
11 Defendant.)
12 _____)13 **BEFORE THE COURT** are cross-motions for summary judgment. ECF
14 Nos. 14, 22. Attorney David L. Lybbert represents Plaintiff¹.
15 Special Assistant United States Attorney Kathryn A. Miller
16 represents the Commissioner of Social Security (Defendant). The
17 parties have consented to proceed before a magistrate judge. ECF
18 No. 6. Hardenbrook filed a reply on November 7, 2012. ECF No. 24.
19 After reviewing the administrative record and the briefs filed by
20 the parties, the court **GRANTS** Defendant's Motion for Summary
21 Judgment, **ECF No. 22**.22 **JURISDICTION**23 Hardenbrook protectively applied for disability insurance
24 benefits (DIB) on June 26, 2007. She protectively applied for
25 supplemental security income (SSI) benefits on June 28, 2007,
26 alleging disability since January 4, 2007 (Tr. 113-118).27
28 ¹Ms. Hardenbrook is also known as Ms. Shick.

1 Hardenbrook alleged she is unable to work due to hepatitis C, back
2 fusion, problems with the neck and back, and post-traumatic stress
3 disorder (PTSD)(Tr. 125). The applications were denied initially
4 and on reconsideration (Tr. 65-68, 70-71).

5 Administrative Law Judge (ALJ) Louis J. Volz, III, held a
6 hearing on October 7, 2009. Hardenbrook, represented by counsel,
7 and a vocational expert testified (Tr. 26-60). At the hearing the
8 court granted plaintiff's counsel's motion to amend the onset date
9 to December 31, 2003, which is also the date last insured (Tr.
10 27). The ALJ issued an unfavorable decision on December 18, 2009
11 (Tr. 12-19). On December 6, 2011, the Appeals Council denied
12 review (Tr. 1-3), making the ALJ's decision the final decision of
13 the Commissioner and appealable to the district court pursuant to
14 42 U.S.C. § 405(g). Hardenbrook filed this action for judicial
15 review on January 9, 2012. ECF Nos. 1, 5.

16 STATEMENT OF FACTS

17 The facts have been presented in the administrative hearing
18 transcripts, the ALJ's decision, and the briefs of the parties.
19 They are briefly summarized here.

20 Ms. Hardenbrook was 45 years old on the amended onset date
21 and 51 at the hearing. She earned a GED and completed a two year
22 associate's degree (Tr. 42, 130, 448). She lives with a roommate
23 (Tr. 34). Hardenbrook has worked as a ticket cashier, hotel clerk,
24 bartender, receptionist and cashier/checker (Tr. 56). She
25 testified her left foot is painful. She has pain in both hands and
26 back pain every day (Tr. 35, 52). Hepatitis C causes fatigue and
27 muscle pain (Tr. 38). Thyroid problems cause depression, pain
28 "amplification," a faster heart rate and anxiety. Hemochromatosis

1 causes a faster heart rate, higher blood pressure, fatigue and
2 muscle pain. This condition requires phlebotomies every three
3 months (Tr. 45). Hardenbrook experiences anxiety, depression and
4 sleep problems (Tr. 46-47, 53). She can lift less than five
5 pounds, walk 20 minutes and sit 10-15 minutes (Tr. 35, 50). She
6 takes no medication because she lacks insurance and money (Tr. 35-
7 36). Hardenbrook has a history of abusing cocaine and alcohol (Tr.
8 256).

9 **SEQUENTIAL EVALUATION PROCESS**

10 The Social Security Act (the Act) defines disability as the
11 "inability to engage in any substantial gainful activity by reason
12 of any medically determinable physical or mental impairment which
13 can be expected to result in death or which has lasted or can be
14 expected to last for a continuous period of not less than twelve
15 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also
16 provides that a Plaintiff shall be determined to be under a
17 disability only if any impairments are of such severity that a
18 plaintiff is not only unable to do previous work but cannot,
19 considering plaintiff's age, education and work experiences,
20 engage in any other substantial gainful work which exists in the
21 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus,
22 the definition of disability consists of both medical and
23 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
24 (9th Cir. 2001).

25 The Commissioner has established a five-step sequential
26 evaluation process for determining whether a person is disabled.
27 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person
28 is engaged in substantial gainful activities. If so, benefits are

1 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If not,
2 the decision maker proceeds to step two, which determines whether
3 plaintiff has a medically severe impairment or combination of
4 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

5 If plaintiff does not have a severe impairment or combination
6 of impairments, the disability claim is denied. If the impairment
7 is severe, the evaluation proceeds to the third step, which
8 compares plaintiff's impairment with a number of listed
9 impairments acknowledged by the Commissioner to be so severe as to
10 preclude substantial gainful activity. 20 C.F.R. §§
11 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P
12 App. 1. If the impairment meets or equals one of the listed
13 impairments, plaintiff is conclusively presumed to be disabled. If
14 the impairment is not one conclusively presumed to be disabling,
15 the evaluation proceeds to the fourth step, which determines
16 whether the impairment prevents plaintiff from performing work
17 which was performed in the past. If a plaintiff is able to perform
18 previous work, that Plaintiff is deemed not disabled. 20 C.F.R. §§
19 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, plaintiff's
20 residual functional capacity (RFC) assessment is considered. If
21 plaintiff cannot perform this work, the fifth and final step in
22 the process determines whether plaintiff is able to perform other
23 work in the national economy in view of plaintiff's residual
24 functional capacity, age, education and past work experience. 20
25 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v. Yuckert*,
26 482 U.S. 137 (1987).

27 The initial burden of proof rests upon plaintiff to establish
28 a *prima facie* case of entitlement to disability benefits.

1 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
2 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
3 met once plaintiff establishes that a physical or mental
4 impairment prevents the performance of previous work. The burden
5 then shifts, at step five, to the Commissioner to show that (1)
6 plaintiff can perform other substantial gainful activity and (2) a
7 "significant number of jobs exist in the national economy" which
8 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th
9 Cir. 1984).

10 Plaintiff has the burden of showing that drug and alcohol
11 addiction (DAA) is not a contributing factor material to
12 disability. *Ball v. Massanari*, 254 F.3d 817, 823 (9th Cir. 2001).
13 The Social Security Act bars payment of benefits when drug
14 addiction and/or alcoholism is a contributing factor material to a
15 disability claim. 42 U.S.C. §§ 423 (d)(2)(C)and 1382(a)(3)(J);
16 *Bustamante v. Massanari*, 262 F.3d 949 (9th Cir. 2001); *Sousa v.*
17 *Callahan*, 143 F.3d 1240, 1245 (9th Cir. 1998). If there is
18 evidence of DAA and the individual succeeds in proving disability,
19 the Commissioner must determine whether DAA is material to the
20 determination of disability. 20 C.F.R. §§ 404.1535 and 416.935.
21 If an ALJ finds that the claimant is not disabled, then the
22 claimant is not entitled to benefits and there is no need to
23 proceed with the analysis to determine whether substance abuse is
24 a contributing factor material to disability. However, if the ALJ
25 finds that the claimant is disabled, then the ALJ must proceed to
26 determine if the claimant would be disabled if he or she stopped
27 using alcohol or drugs.

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STANDARD OF REVIEW

Congress has provided a limited scope of judicial review of a Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold the Commissioner's decision, made through an ALJ, when the determination is not based on legal error and is supported by substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). "The [Commissioner's] determination that a plaintiff is not disabled will be upheld if the findings of fact are supported by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989); *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d 573, 576 (9th Cir. 1988). Substantial evidence "means such evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)(citations omitted). "[S]uch inferences and conclusions as the [Commissioner] may reasonably draw from the evidence" will also be upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the Court considers the record as a whole, not just the evidence supporting the decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

26 It is the role of the trier of fact, not this Court, to
27 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
28 evidence supports more than one rational interpretation, the Court

1 may not substitute its judgment for that of the Commissioner.
 2 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
 3 (9th Cir. 1984). The court will set aside a denial of benefits
 4 only if it is not supported by substantial evidence or is based on
 5 legal error. *Berry v. Astrue*, 622 F.3d 1228, 1231 (9th Cir. 2012).
 6 Even if the ALJ erred, the court will uphold the decision so long
 7 as the error was harmless. *Lockwood v. Comm'r Soc. Sec. Admin.*,
 8 616 F.3d 1068, 1071 (9th Cir. 2010)(citation omitted).

9 If there is substantial evidence to support the
 10 administrative findings, or if there is conflicting evidence that
 11 will support a finding of either disability or nondisability, the
 12 finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812
 13 F.2d 1226, 1229-1230 (9th Cir. 1987).

14 **ALJ'S FINDINGS**

15 At step one, ALJ Volz found Hardenbrook did not earn
 16 substantial gainful activity after June 28, 2007, the date she
 17 applied for benefits (Tr. 14). At step two, he found she suffers
 18 from the severe impairments of degenerative disc disease (DDD) of
 19 the cervical and lumbar spine, hepatitis C and
 20 hyperparathyroidism, impairments that are severe but do not meet
 21 or medically equal any listed impairments (Tr. 14-15). The ALJ
 22 found Hardenbrook less than fully credible (Tr. 18). He found she
 23 is able to perform the full range of light work (Tr. 15). At step
 24 four, relying on the vocational expert's testimony, the ALJ found
 25 Hardenbrook is able to perform her past relevant work as a
 26 bartender, ticket cashier, hotel clerk, receptionist and
 27 cashier/checker (Tr. 18). The ALJ found Hardenbrook has not been
 28 under a disability, as defined by the Social Security Act, since

1 the date of application, June 28, 2007 (Tr. 19).

2 **ISSUES**

3 Hardenbrook alleges the ALJ should have found her mental
 4 impairments and fatigue severe, should have developed the record
 5 more fully, and erred when he assessed the medical evidence and
 6 her credibility. ECF No. 15 at 5-18.

7 As noted, at the hearing Hardenbrook's counsel amended the
 8 onset date to the date last insured, December 31, 2003 (Tr. 27).
 9 On appeal Hardenbrook asks this Court to amend the last insured
 10 date to December 31, 2006. ECF No. 15 at 20-21. The Commissioner
 11 asserts the decision should be affirmed because it is supported by
 12 substantial evidence and free of harmful legal error. ECF No. 23
 13 at 5.

14 **DISCUSSION**

15 **A. Weighing medical evidence**

16 In social security proceedings, the claimant must prove the
 17 existence of a physical or mental impairment by providing medical
 18 evidence consisting of signs, symptoms, and laboratory findings;
 19 the claimant's own statement of symptoms alone will not suffice.
 20 C.F.R. § 416.929.

21 A treating physician's opinion is given special weight
 22 because of familiarity with the claimant and the claimant's
 23 condition. *Fair v. Bowen*, 885 F.2d 597, 604-605 (9th Cir. 1989).
 24 However, the treating physician's opinion is not "necessarily
 25 conclusive as to either a physical condition or the ultimate issue
 26 of disability." *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
 27 1989)(citations omitted). More weight is given to a treating
 28 physician than an examining physician. *Lester v. Chater*, 81 F.3d

821, 830 (9th Cir. 1995). Correspondingly, more weight is given to
 1 the opinions of treating and examining physicians than to
 2 nonexamining physicians. *Benecke v. Barnhart*, 379 F.3d 587, 592
 3 (9th Cir. 2004). If the treating or examining physician's opinions
 4 are not contradicted, they can be rejected only with clear and
 5 convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the
 6 ALJ may reject an opinion if he states specific, legitimate
 7 reasons that are supported by substantial evidence. See *Flaten v.*
 8 *Secretary of Health and Human Serv.*, 44 F.3d 1453, 1463 (9th Cir.
 9 1995).

In addition to the testimony of a nonexamining medical
 11 advisor, the ALJ must have other evidence to support a decision to
 12 reject the opinion of a treating physician, such as laboratory
 13 test results, contrary reports from examining physicians, and
 14 testimony from the claimant that was inconsistent with the
 15 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,
 16 751-52 (9th Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9th
 17 Cir. 1995).

When an ALJ discounts the testimony of lay witnesses, "he [or
 19 she] must give reasons that are germane to each witness."
 20 *Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th
 21 Cir. 2009), citing *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir.
 22 1993).

24 B. Step two - psychological impairments

Hardenbrook alleges the ALJ should have found she suffers
 25 from the severe mental impairments of depression, anxiety or PTSD.
 26 ECF No. 15 at 5. The Commissioner responds that (1) the court need
 27 not consider the allegation because it is inadequately supported
 28

1 by citation to the record or analysis to assist the court in
 2 evaluating the legal challenge; (2) a diagnosis does not "equate
 3 to a finding of disability"; and (3) the record supports the ALJ's
 4 determination that plaintiff's mental impairments cause no more
 5 than a minimal impact on her ability to perform work-related
 6 activities, meaning they are non-severe. ECF No. 23 at 7-11.

7 The ALJ considered Hardenbrook's minimal mental health
 8 treatment when he found mental impairments non-severe. He noted
 9 she was not currently receiving any mental health treatment and
 10 was not taking psychotropic medication (Tr. 15), although in the
 11 past Hardenbrook received counseling and took medication
 12 sporadically.

13 The ALJ is correct. On May 5, 2009, plaintiff reported she
 14 became engaged and things had been going very well the past few
 15 weeks (Tr. 644). On June 25, 2009, Hardenbrook's mental health
 16 file was closed because she no longer met the criteria for state
 17 funded services (Tr. 647). The ALJ relied on examining
 18 psychologist Mahlon Dalley, Ph.D., and Abigail Osborne-Elmer, MS,
 19 LMHC's opinion plaintiff "does not exhibit a psychological
 20 disability that would prevent her from working" (Tr. 17-18, 442).
 21 They gave this opinion after an examination on December 12, 2006,
 22 and assessed a GAF of 62, indicating no more than mild symptoms or
 23 limitations.

24 The ALJ also assessed Hardenbrook's credibility and the
 25 record as a whole when he weighed the medical evidence, including
 26 mental limitations (Tr. 18).

27 **C. Credibility**

28 Hardenbrook alleges the ALJ's reasons for finding her less

1 than credible are not convincing. The ALJ relied on infrequent
 2 treatment, daily activities and lack of supporting objective
 3 evidence. ECF No. 15 at 14-16. The Commissioner responds that the
 4 reasons are clear, convincing and supported by substantial
 5 evidence. ECF No. 23 at 13-16.

6 The Commissioner is correct.

7 Hardenbrook characterizes her activities of wake boarding and
 8 judo (Tr. 491, 542) as isolated events that do not accurately
 9 reflect day to day limitations. ECF No. 24 at 1-3. The record,
 10 however, reveals a very wide range of activities that undermine
 11 allegedly severe limitations. Hardenbrook played pool, worked on
 12 art (drawing with charcoal and pastels), danced, drove to
 13 Washington state from Florida, biked, actively searched for work,
 14 worked part-time as a bartender, camped, traveled with a truck
 15 driver friend, and worked in landscape design (Tr. 30, 255-56,
 16 276, 361, 365, 376-77, 439, 448, 458, 531, 551, 554, 589, 609,
 17 624). Daily activities inconsistent with alleged limitations
 18 constitute a convincing reason to find a claimant less than
 19 credible. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

20 The ALJ is permitted to consider lack of treatment in his
 21 credibility determination. *Burch v. Barnhart*, 400 F.3d 676, 681
 22 (9th Cir. 2005). Hardenbrook testified she had no insurance between
 23 November 9, 2004 and May 2006 (Tr. 43), and stopped taking
 24 medication in June 2009 (about four months before the hearing)
 25 because she had no money and no medical insurance (Tr. 36). This
 26 does not fully explain noncompliance. Doctors told Hardenbrook in
 27 December 2006 she needed to be alcohol-free for six months in
 28 order to undergo treatment for hepatitis C (Tr. 292). In August

1 2007, Hardenbrook admitted she continued to drink. She received a
 2 second DUI in February 2008, relapsed in September 2008 and did
 3 not go to treatment for alcohol dependency until November 2008
 4 (Tr. 525, 557, 587, 612). This non-compliance occurred during
 5 periods Hardenbrook admits she had insurance coverage

6 While subjective pain testimony cannot be rejected on the
 7 sole ground that it is not fully corroborated by objective medical
 8 evidence, a lack of objective medical evidence is still a relevant
 9 factor the ALJ can consider in his credibility analysis. *Burch*,
 10 400 F.3d at 681. On March 27, 2007, neurosurgeon Alfred Higgins,
 11 M.D., reviewed a March 21, 2007 MRI and treating doctor Johnson's
 12 notes. He opined "there is no structural evidence for cause of the
 13 patient's symptoms, nor are there abnormalities seen that would
 14 benefit from surgical intervention." He recommended continuing
 15 conservative treatment (Tr. 281-82). Treating doctor Michael
 16 Johnson, D.O., agreed (Tr. 251), as the ALJ observes (Tr. 17).
 17 While not noted by the ALJ, the record also reveals inconsistent
 18 statements and an MMPI-2 that is invalid due to over-reporting
 19 (Tr. 440). Treating sources opined plaintiff "appears to want to
 20 be disabled. . . One might suspect secondary gain issues from her
 21 presentations in the past" (Tr. 266); plaintiff feels she cannot
 22 work; "however, it is not clear if this is the case" (Tr. 496);
 23 and "exaggerated pain behaviors" are noted (Tr. 512).

24 The ALJ's reasons for his credibility assessment are clear,
 25 convincing and fully supported by the record. His reasons for
 26 finding Hardenbrook suffers only non-severe mental impairments are
 27 well supported by the record. Any step two error by the ALJ is
 28 clearly harmless. *Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d

1 1155, 1163 (9th Cir. 2008)(holding an ALJ's error in reasoning
 2 harmless where it did not undermine the "validity of the ALJ's
 3 underlying decision").

4 Hardenbrook fails to meet her burden of showing harmful
 5 error.

6 **C. Step two - physical impairments**

7 Hardenbrook alleges the ALJ erred by omitting limitations due
 8 to fatigue and pain. ECF No. 15 at 7, 9-10, 12-13. Citing *Bayliss*
 9 v. *Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005), the Commissioner
 10 responds that the ALJ properly considered the limitations
 11 supported by the record and not dependent on Hardenbrook's
 12 unreliable subjective reporting. ECF No. 23 at 18.

13 Plaintiff further alleges, without citation to authority or
 14 the record, the ALJ "failed to find any impairment from the
 15 claimant's condition of hemochromatosis," and this "in combination
 16 with her hepatitis C, and her hyperparathyroidism produced
 17 significant problems of fatigue that the claimant dealt with on a
 18 daily basis." ECF No. 15 at 7.

19 The record does not support plaintiff's allegation.

20 In May 2009, Ann Andersen, ARNP, discussed Hardenbrook's
 21 hemochromatosis: plaintiff is "doing quite well with no sign of
 22 new symptomology." She notes plaintiff would need a phlebotomy and
 23 re-evaluation in three months (Tr. 546). In December 2006 Dr.
 24 Smith opined there are "no clear symptoms referable to chronic
 25 hepatitis C" (Tr. 291). In October 2007 treating doctor Johnson
 26 opined Hardenbrook's hepatitis C caused no significant
 27 interference with the ability to perform basic work activities
 28 (Tr. 503)(emphasis added). Notes in November 2008 show hepatitis C

1 is stable (Tr. 523). On May 15, 2008, after thyroid surgery,
2 plaintiff's energy is "way up" and her mood is considerably better
3 (Tr. 604). The record shows only intermittent complaints of
4 fatigue. Plaintiff's allegation is not supported by the record.
5 With respect to pain, the ALJ relied on examining and treating
6 sources, and plaintiff's admitted activities, when he weighed the
7 evidence of physical impairment.

8 **D. Weighing other medical evidence**

9 Hardenbrook alleges the ALJ failed to properly credit
10 treating Dr. Johnson's RFC at Tr. 435. ECF No. 15 at 16. Plaintiff
11 is incorrect. In this assessment Dr. Johnson opined sitting and
12 standing are unlimited (Tr. 435), indicating at least sedentary
13 work. Although he notes "further psychiatric needs," it is clear
14 Dr. Johnson did not treat mental conditions (Tr. 436). As noted,
15 examining sources have opined plaintiff is physically capable of
16 light work and she has no severe mental limitations. Several
17 treating sources have questioned Hardenbrook's credibility. The
18 ALJ's RFC for light work is consistent with the medical evidence
19 and with the plaintiff's wide ranging activities, including the
20 ability to work part-time. The ALJ properly considered the record
21 as a whole when he assessed an RFC for light work.

22 **F. Developing the record and last insured date**

23 Hardenbrook asserts that the ALJ has an affirmative duty to
24 develop the record. ECF No. 15 at 7. Plaintiff fails to provide
25 specific argument in her briefing. She neither cites to evidence
26 or legal authority, nor explains specifically how and why the ALJ
27 erred. The court ordinarily will not consider matters on appeal
28 that are not specifically and distinctly argued in an appellant's

1 opening brief. See *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533
 2 F.3d 1155, 1161 n.2 (9th Cir. 2008). Because Plaintiff failed to
 3 provide adequate briefing, the court declines to consider the
 4 issue. To the extent Hardenbrook alleges the evidence of
 5 psychological limitations required further development, ECF No. 15
 6 at 20, she is incorrect. The ALJ's duty to develop the record is
 7 triggered when the evidence is ambiguous or the record is
 8 inadequate to make a disability determination. *Tonapetyan v.*
 9 *Halter*, 242 F.3d 114, 1150 (9th Cir. 2001). Neither applies here.

10 The court denies plaintiff's request that the court amend the
 11 last insured date to December 31, 2006, ECF No. 15 at 20, but,
 12 even if amended, the record fully supports the ALJ's decision.

13 Because the ALJ accepted and incorporated limitations
 14 established by the evidence, plaintiff fails to show harmful
 15 error.

16 A claimant for social security benefits carries the burden of
 17 proving she is disabled. 42 U.S.C. § 423(d)(5)(A); *Valentine v.*
 18 *Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009).

19 The trier of fact, and not the reviewing court, must resolve
 20 conflicts in the evidence and, if the evidence can support either
 21 outcome, the court may not substitute its judgment for that of the
 22 ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992); *Burch*
 23 *v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

24 CONCLUSION

25 Having reviewed the record and the ALJ's conclusions, this
 26 Court finds the ALJ's decision is free of harmful legal error and
 27 supported by substantial evidence.

28 IT IS ORDERED:

ORDER GRANTING DEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT

1. Defendant's Motion for Summary Judgment, ECF No. 22, is GRANTED.

2. Plaintiff's Motion for Summary Judgment, ECF No. 14, is
DENIED.

The District Court Executive is directed to file this Order, provide copies to the parties, enter judgment in favor of Defendant, and **CLOSE** the file.

DATED this 7th day of February, 2013.

s/ James P. Hutton

JAMES P. HUTTON
UNITED STATES MAGISTRATE JUDGE